

Appl. No. 10/811,527
Docket No. 8768MD2
Amdt. dated October 10, 2008
Reply to Office Action mailed on July 10, 2008
Customer No. 27752

REMARKS

Claim Status

Claims 37-54 are pending in the present application.

Claims 1-36 are canceled without prejudice.

New claims 37-54 have been added. Support for this amendment is found at page 9 of the specification.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejection Under 35 USC §102 Over Odorzynski

Claims 1, 6, 9, 13, 15, 17, 23-27 and 30-35 stand rejected under 35 USC 102(b) as being anticipated by Odorzynski et al (U.S. Patent No. 6,245,050). However, as will be set forth in detail below, it is believed that the article defined by independent claims 37 and 54 are not anticipated by Odorzynski. Accordingly, this rejection is traversed and reconsideration is respectfully requested.

Applicants submit that Odorzynski fails to teach or suggest each and every limitation of the invention recited in claims 37 and 54, such that there is a failure to anticipate Applicants' invention. Odorzynski relates to a disposable absorbent article that includes at least one elasticized area formed from an elastomeric, hot melt, pressure-sensitive adhesive that is used to bond a first and second component to one another. The hot melt, pressure-sensitive adhesive and the elasticized area formed therewith have the following characteristics: a) an adhesive bond strength sufficient to adhere said first and second components together during use of said disposable absorbent article; b) an elongation of at least 50 percent; c) a retractive force of less than 400 grams force per inch width at 90 percent elongation; d) a viscosity of less than 70,000 centipoise at 350 degrees F; and e) a cold flow value of less than 20 percent at 54 degrees C.

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In spite of these various disclosures, Odorzynski does not teach or suggest the presently claimed invention, namely an absorbent article comprising an elastic component said elastic component comprising a first substrate having an elastomeric composition . . . wherein the elastomeric composition comprises a phase change solvent where such composition is printed onto a substrate. Rather, Odorzynski only teaches application via “spraying, film forming, slot coating , and the like” of an elastomeric, hot melt, single pressure sensitive adhesive onto a single substrate. There is no teaching or suggestion of an absorbent article having an elastomeric composition comprising a phase change solvent. Odorzynski’s pressure sensitive adhesives, e.g., Findley’s H2503 and H2504, do not include a phase change solvent as required by the present claims. This phase change solvent is effective for rendering the elastomeric composition processible at a temperature of 175°C or lower, without substantially compromising the elastic and mechanical properties of the composition.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). “The identical invention must be shown in as complete detail as contained in the . . . claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Because Odorzynski fails to teach or disclose every element of independent claims 37 and 54, Applicants assert that independent claims 37 and 54 are in condition for allowance. Further, because claims 38-53 depend directly or indirectly from Claim 37, they too are not anticipated by Odorzynski and therefore, are in condition for allowance.

Rejection Under 35 USC 102(b) or under 103(a)

Claims 28 and 29 stand rejected under 35 USC 102(b) as being anticipated by or, in the alternative, under 35 USC 103(a) as obvious over Odorzynski et al. However, as will be set forth in detail below, it is believed that the article defined by independent

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claim 37 is not anticipated by or obvious over Odorzynski. Accordingly, this rejection is traversed and reconsideration is respectfully requested.

In order to establish a *prima facie* case of obviousness, three requirements must be met. MPEP §2143. First, there must be some suggestion or motivation, either in the cited references or in the knowledge generally available to one ordinarily skilled in the art, to modify the reference. *Id.* Second, there must be some reasonable expectation of success. *Id.* Third, the cited references must teach or suggest all of the claim limitations. *Id.* Applicants respectfully traverse this rejection because the Office Action fails to establish a *prima facie* case of obviousness.

As detailed above, Odorzynski fails to teach or even suggest the presently claimed invention, namely an absorbent article comprising an elastic component said elastic component comprising a first substrate having an elastomeric composition . . . wherein the elastomeric composition comprises a phase change solvent where such composition is printed onto a substrate. Because Odorzynski fails to teach or suggest all of the claim limitations of independent claim 37, Applicants assert that independent claim 37 is in condition for allowance. Further, because claims 52 and 53 (similar in scope to previous claims 28 and 29) depend from Claim 37, they too are not anticipated and are nonobvious over the cited reference and are in condition for allowance.

Claims 16, 18-22 and 36 also stand rejected under 35 USC 103(a) as being unpatentable over Odorzynski. These claims have been canceled and the new claims directed to the similar subject matter, i.e., claims 45, 46 and 54 are nonobvious over Odorzynski for the same reasons as discussed above with respect to claims 37, 52 and 53.

Claim 2 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Odorzynski in view of Himes (U.S. Patent No. 5,304,599). The Office states that “[w]ith respect to Claim 2: Odorzynski does not teach a percent set for the elastomeric adhesive. Himes teaches an extrudable elastomeric composition including an elastomeric polymer and a tackifying resin having a percent set of 9%. (‘599, Table 4). Himes teaches that this composition is suitable for extrusion onto an elastic sheet, therefore it would be obvious to substitute the composition taught by Himes for the adhesive composition as taught by

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Odorzynski so as to have a backsheet with the adhesive composition therein having a percent set of 9%.”

Applicant traverses this rejection, for the same reasons detailed above. Himes does not remedy Odorzynski’s shortcoming detailed above. Rather, Himes focuses on a particular extrudable elastomeric composition that comprises an elastomeric polymer and a tackifying resin where the composition if formed into an elastic sheet having a stress relaxation of less than about 30 percent. Therefore, even application of Himes fails to yield a combination that amounts to the article of claim 37.

It is well settled that references relied upon to support a rejection under 35 U.S.C. 103(a) must provide an enabling disclosure, i.e., they must place the claimed invention in the possession of the public. *In re Payne*, 203 U.S.P.Q. 245 (CCPA 1979). Because the cited combination fails to teach all of the claim limitations of amended Claim 37, the Office Action has not established a *prima facie* case of obviousness and has not placed the presently claimed article in the possession of the public.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections under 35 USC §§’s 102(b) and 103(a). Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 37-54 is respectfully requested.

Respectfully submitted,

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